UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/032,969	10/25/2001	Cynthia K. Schilling	10006627-2	1054

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EXAMINER
JOO, JOSHUA

ART UNIT	PAPER NUMBER
2154	

DATE MAILED: 02/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Office Action Summary	10/032,969	SCHILLING ET AL.
	Examiner	Art Unit
	Joshua Joo	2154

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>25 October 2001</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-19</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-19</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

1.   Claims 1-19 are presented for examination.

2.   Claims 1-19 are rejected.

Double Patenting

3.   A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

        A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer <u>cannot</u> overcome a double patenting rejection based upon 35 U.S.C. 101.

4.   Claims 1-19 are provisionally rejected under 35 U.S.C. 101 as claiming the same

invention as that of claim 1-19 of copending Application No. 09/999,582. This is a <u>provisional</u>

double patenting rejection since the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

5.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6.   Claims 1-5, 8-14,17-19 are rejected under 35 U.S.C. 102(b) as being unpatentable by

Waclawsky et al, US Patent #5,974,457 (Waclawsky hereinafter).

7.   As per claims 1, 10, and 19, Waclawsky teaches a method and a monitoring device for

the real time monitoring of a network component by collect sets of data over a specified interval

of time. Waclawsky's invention comprises of:

a)   Executing a first program on at least one portion of said electronic network (Col

7, lines 17-20. The invention monitors network media or some network component over some

period.);

b)   Receiving first data resulting from the execution of said first program (Col 22-23.

The monitoring information is used to build benchmark data sets.);

c)   Analyzing said first data to determine if said at least one portion of said network

is not operating within a preselected specification (Col 7, lines 22-34. Monitoring information is

used to build benchmark data sets. Benchmark data obtained from the current monitor activities

determines whether the current monitoring indicates activities normal or abnormal network

behavior. Col 7, lines 50-55. Benchmark data is compared using criteria that are in modules.);

d)   Receiving second data resulting first the execution of said second program (Col

7, 20-23. Monitoring is done on a specified interval, which is used to build data sets.); and

e)   Analyzing said first data and second data to determine the cause of said at least

one portion of said network not operating within said preselected specification (Col 7, line 55 –

Col 8, line 6. The current monitored data is compared to the prior benchmark to evaluate the

network. The logs of information are used to effect network changes since there is some

condition in the network that the network needs to be corrected or optimized for.)

8.   As per claims 2 and 11, Waclawsky teaches the invention of claims 1 and 10, wherein

said executing a first program comprises measuring the latency associated with said at least

one portion of said electronic network (Col 8, lines 39-49. Criteria that are used to evaluate

whether the system is operating within some bounds or not can be criteria that is generally

acceptable criteria for finding known network problems such as delay characteristics.).

9.   As per claims 3 and 12, Waclawsky teaches the invention of claims 1 and 10, wherein

said at least one portion of said network has a connector associated therewith, said connector

storing a management information base, and wherein said executing a first program comprises

measuring data stored in said management information base (Col 7, lines 29-35. The

benchmark data previously created are used to determine whether the data obtained from the

current monitoring indicates normal or abnormal network status. The new benchmark data set

may be a combination of old and new data sets, which retain accumulated network behavior

over very long intervals.).

10.   As per claims 4 and 13, Waclawsky teaches the invention of claims 1 and 10, wherein

said executing a first program comprises performing at least two measurements of a parameter

of said network, and wherein said first data provides an indication of said network not operating

within a preselected specification if the difference of said at least two measurements exceeds a

preselected amount (Col 7 lines 56-64. The criteria modules are responsible for evaluating the

current monitored data from against the prior benchmark data collected during subsequent

intervals such as the intervals of the same hour in the same day of different weeks. The criteria

module determines if the current network operating characteristics are outside the bounds of

normal behavior.)

11.   As per claims 5 and 14, Waclawsky teaches the invention of claims 1 and 10, wherein

said first program stores correlations between previous network conditions and previous

network problems, and wherein said executing a first program comprises comparing present

network conditions to stored network conditions and determining a network problem based at

least in part on the comparison (Col 8, lines 31-39. Benchmark data sets are stored to provide

a history of network activity, which can be used to determine whether the network exceeds or

will exceed some criteria that indicate performance problems. Col 7 lines 56-64. The criteria

modules are responsible for evaluating the current monitored data from against the prior

benchmark data collected during subsequent intervals. Col 7, lines 61-65. If the network is

operating outside the bounds of normal behavior, alerts and logs of information are sent to the

expert system.).

12.   As per claims 8 and 17, Waclawsky teaches the inventions of claims 1 and 10, and

further comprising displaying a graphical user interface representative of said network, said

graphical user interface indicating said portion of said network not operating within said

preselected application (Col 8, line 63 – Col 8, line 6. The expert system receives logs of

information, which indicate information used to correct the network. Col 12, lines 19-43. Expert

system outputs information log to a display. A display for the real time intelligent monitoring

display is a series of informational windows based on activity reported by the various criteria

within the system. Some of the windows can be opened a screen when traffic exists. It displays

information about the alert status and categories of alert as seen by the expert system).

13.   As per claims 9 and 18, Waclawsky teaches the method of claims 8 and 17, wherein

said graphical user interface further displays information relating to at least one cause of said

network not operating within said preselected specification (Col 8, line 63 – Col 8, line 6. The

expert system receives logs of information, which indicate information used to correct the

network. Col 12, lines 19-43. A display for the real time intelligent monitoring display is a series

of informational windows based on activity reported by the various criteria within the system.

Some of the windows can open a screen when traffic exists.).

Claim Rejections - 35 USC § 103

14.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

15.   Claims 6-7, 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Waclawsky, US Patent #5,974,457 and in view of Mayton et al, US Patent #6,763,380 (Mayton

hereinafter).

16.   As per claims 6 and 15, Waclawsky teaches that the criteria used to evaluate whether

the system is operating within bounds consist of criteria that is generally acceptable criteria for

find known network problems (Col 8, lines 39-43).

17.   Waclawsky does not specifically teach the invention, wherein said executing said first

program comprises running at least one trace route routine on said at least one portion of said

network, said trace route measuring the latency of said at least one portion of said network.

18.   Mayton teaches an invention for tracking network device performance by obtaining

performance measurements through testing such as the use of trace routes. A trace route is

used to obtain the latency between portions of the network (Col 3, lines 54-65; Col 14, lines 49-

59).

19.   It would have been obvious to one of ordinary skill in the art at the time the invention was

made to combine the teachings of Waclawsky and Mayton because including the use of trace

routes to obtain latency in addition to the criteria used to evaluate the performance of the

network provides the invention of Waclawsky a specific example of analyzing the network for

proper performance, and it provides an effective way to monitor the performance of the network

such as detecting timeouts and outages.

20.   As per claims 7 and 16, Waclawsky teaches that the criteria modules are responsible for

evaluating the current monitored data from against the prior benchmark data collected during

subsequent intervals. The criteria module determines if the current network operating

characteristics are outside the bounds of normal behavior. The criteria used to evaluate

whether the system is operating within bounds consist of criteria that is generally acceptable

criteria for find known network problems (Col 7, lines 56-64; Col 8, lines 39-43).

21.   Waclawsky does not specifically teach the invention, wherein said executing said first

program comprises running a trace route routine at first time and a second time on said at least

a portion of said network, said trace route routine measuring the latency of said at least one

portion of said network, said first data corresponding to the difference between the latency

measured said first time and said second time said trace routine is run.

22.   Mayton teaches an invention for tracking network device performance by obtaining

performance measurements through testing such as the use of trace routes.   A trace route is

used to obtain the latency between portions of the network (Col 3, lines 54-65; Col 14, lines 49-

59).

23.   It would have been obvious to one of ordinary skill in the art at the time the invention was

made to combine the teachings of Waclawsky and Mayton because including the use of trace

routes to obtain latency in addition to the criteria used to evaluate the performance of the

network provides the invention of Waclawsky a specific example of analyzing the network for

proper performance, and it provides an effective way to monitor the performance of the network

such as detecting timeouts and outages..

Conclusion

24.   A shortened statutory period for reply to this Office action is set to expire THREE

MONTHS from the mailing date of this action.

25.   Any inquiry concerning this communication or earlier communications from the examiner

should be directed to Joshua Joo whose telephone number is 571 272-3966 and fax number is

571 273-3966. The examiner can normally be reached on Monday to Thursday 8 to 5:30.

26.   If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, John A Follansbee can be reached on 571 272-3964.

27.   Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private

PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

February 4, 2005
JJ

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